

# THE ACT REPORT

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The ACT Foundation is a division of The West Virginia State Building and Construction Trades Council, with offices in Charleston and Clarksburg. Steve Burton, President; Roy Smith, Secretary-Treasurer; Steve White, Director.

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## INSIDE

Grant Case	Pg. 2
Comp Bill	Pg. 2
Comp Debt	Pg. 3
Lang Bros.	Pg. 3
Credit Union	Pg. 3
Power Project	Pg. 4

# Jobs Act Renewed Through 2006

**T**he West Virginia Jobs Act was re-enacted this session.

That means three more years of local hiring for construction jobs your tax dollars create.

The good news is this law, first passed two years ago, now covers county and city projects as well as local economic development projects.

But the requirements of the Jobs Act now only apply to projects larger than \$1 million instead of \$500,000.

This means any contractor who wins a publicly funded project worth more than \$1 million must hire 75 percent of the construction workers from

the local area.

The local area is still defined as any county in West Virginia or a county within 75 miles of West Virginia's borders.

"We had to compromise and raise the project size to \$1 million to get city, county and local projects included but it was worth it," said Steve White, ACT director.

Passing the law was not easy and required the help of many members who called legislators, helped lobby and attended public meetings.

"When the Boilermakers and others showed up at our first Senate committee meeting and filled the room, people took

notice," said White.

It was not until the final minutes of the legislative session that the Jobs Act passed.

At 11:45 p.m. on Saturday night the Jobs Act cleared its last hurdle and was passed by the Senate.

The next bill taken up was Workers Compensation, the last bill of the session.

The WV Jobs Act will be in effect for three years. During that time the Division of Labor is to collect employment data for a report to be presented to the legislature in the fall of 2005.

"We have a law that will prevent local workers' tax dol-

## Jobs ACT Changes

- Extended for 3 years
- Applies to publicly funded construction worth more than \$1 million.
- Applies to county, city and local projects

lars from being given to out-of-state folks who don't spend their paychecks in our local communities," said ACT Legislative Representative BB Smith. "Makes sense to me."

## 2003 Session Ends With Mixed Results

**A**s is the case every legislative session, organized labor won a few battles, but they lost a few as well.

The victories included: renewal of the West Virginia Jobs Act, the defeat of five separate attacks on prevailing wage and passage of a bill clarifying the Public Service Commission's role in regulating wholesale power plants.

The unfortunate defeats included: the passage of an unfavorable medical malpractice bill, the legalization of 120,000 pound coal trucks, failure to pass the public-private highway construction act, and finally the failure of the legislature to come up with a reasonable workers compensation bill during the regular session.

"Passage of the Jobs Act was a critical step in organized labor's fight for responsible economic development in West

Virginia," said George Pinkerman, Business Manager for Boilermakers Local 667.

ACT's victory last year in the State Supreme Court against Constellation Power was transferred into law this

session. In addition, the PSC must ensure these power companies do exactly what their applications obligate them to do.

"Although we lost the work at the Big Sandy Peaker, our Supreme Court victory helped

lars from being given to out-of-state folks who don't spend their paychecks in our local communities," said ACT Legislative Representative BB Smith. "Makes sense to me."

Two senate bills were defeated. One was SB167, sponsored by Sen. Mike Oliverio (D-Monongalia), which would move prevailing wage determination from the Division of Labor to the Bureau of Employment Programs.

"SB167 would have lowered the prevailing wage rate and created questions about enforcement," said Scott Brewer, service representative for the Mid-Atlantic Regional Council of Carpenters.

Sen. Herb Snyder (D-Jefferson), introduced the other bill in the Senate Labor Committee. This bill would have required 30 percent of West Virginia contractors to file payrolls for the determination of prevailing wage or face a \$250 fine.

The bill would have also  
*Continued on p. 4*

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*'ALTHOUGH WE LOST THE WORK AT THE BIG SANDY PEAKER, OUR SUPREME COURT VICTORY HELPED LEGISLATORS SEE THAT THEY NEEDED TO ENSURE FUTURE POWER PLANT PROJECTS WERE AN ECONOMIC BOOM NOT A BUST.'*

STEVE BURTON, BUS. MANAGER, TRI-STATE BUILDING TRADES

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session.

HB2870 clarified the PSC's role in regulating merchant power plants such as Constellation's Big Sandy Peaker Plant.

The PSC must review all projects to ensure that local jobs are created for local work-

legislators see that they needed to ensure future power plant projects were an economic boom not a bust," said Steve Burton, Business Manager for the Tri-State Building Trades.

A victory is not always measured with the passage of a bill. Sometimes it comes when bad

# ACT Weighs In On \$200 Million State Grant Case

**ACT is weighing in on the state Supreme Court case in which the \$200 million state Grant Committee is being challenged.**

The case was argued before the court on Tuesday March 11.

At stake is more than \$400 million in state construction projects. That's because each project approved by the committee includes additional funding from private companies.

ACT has filed a friend of the court brief urging the justices to consider the importance of funding good, prevailing wage, construction jobs.

The brief points out that the legislature intended for any

money spent by the grant committee to have a positive economic impact on West Virginia.

One of the ways the legislature intended to ensure that positive economic impact was by including provisions in which any construction done with grant money had to adhere to competitive bid and prevailing wage laws.

The economic impact of the projects during the construction phase will be both direct and indirect, according to the

brief.

The direct benefit comes from the materials and wages paid for by the construction projects themselves.

how much impact these prevailing wage projects would have.

The following figures demonstrate the multiplier effect during the two-year construction phase of the six projects that have already been permitted to proceed in circuit court.

Those six projects require an investment of \$99 million by the grant committee, while an addition \$136 million would be provided through private funding.

- 1,776 construction jobs created
- \$536 million in business

sales

- \$227 million in worker wages and benefits
- \$22 million will go to business owners
- \$35 million will go to corporations in profits and interest
- \$23 million created in new tax revenue

"It's clear the initial investment is worth it when you compare the amount of money the multiplier effect will bring into West Virginia," said, Vince Trivelli, ACT attorney.

"ACT filed the brief to help the court understand just how important these projects are to not only the construction workers of ACT but also the business owners and taxpayers of West Virginia."

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*'IT'S CLEAR THE INITIAL INVESTMENT IS WORTH IT WHEN YOU COMPARE THE AMOUNT OF MONEY THE MULTIPLIER EFFECT WILL BRING INTO WEST VIRGINIA.'*

VINCE TRIVELLI, ACT ATTORNEY

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The indirect benefit comes from a multiplier effect in which those payments for materials and labor are again spent in the local communities on products.

Using a formula originally developed by the U.S. Forest Service the brief shows just

## Comp Bills Fail, Special Session In The Works

**From defeat to stalemate, that's the current situation for working families and workers comp.**

Proposed legislation to 'reform' workers compensation laws was worse than the terrible 1995 bill according to Jim Bowen, President of the West Virginia AFL-CIO.

But thanks to Bowen and numerous others from the labor movement the worst of the proposals were defeated on the last day of the session.

The fight over workers comp lasted the entire 60 day session.

In the first week of the session the House of Delegates passed a bill with no discussion or debate to slash benefits.

That was bad.

But when the Senate got the

bill they turned bad to worse.

Company lawyers for the self-insured companies started inserting a long list of changes into the law.

Benefits payments were slashed.

Proving disability was made next to impossible.

Black lung funds were raided while benefits were cut.

Legal terms and processes were distorted to put injured workers at a tremendous disadvantage.

Injured senior citizens were cut off at age 70.

Attempts to hold cheating companies accountable were rejected.

Two years of premium in-

creases at 15 to 18 percent annually.

Labor leaders opposed the bill (HB2120) but until the last day it looked like passage was certain.

Ready to go down fighting, labor lobbyists teamed up to

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*'WE KNOW THE SYSTEM NEEDS TO BE FIXED, BUT IT SHOULD NOT BE ON THE BACKS OF WORKERS.'*

ROY SMITH, SEC.-TEAS., WV STATE BUILDING TRADES

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make sure all delegates were clear about the labor position—vote against the bill.

Near noon on the final day rumors started to be heard about a lack of votes needed in the House to pass the bill.

House Republicans were upset about the premium increases and unanswered questions

about what the big companies would pay, if anything.

Governor Wise threatened to put the state Workers Compensation system into receivership.

Labor didn't budge, neither did the House Republicans.

The bill was dead.

In the last few hours of the evening Bowen, working with House

Speaker Bob Kiss, put together a new bill that would provide for restructuring of the comp system and requiring self-insured companies pay their share of the debt.

The bill passed the House unanimously.

That bill would have passed the Senate had it not been for a

filibuster by Republican leader Vic Sprouse (R-Kanawha) that ate away the last ten minutes of the session, killing a number of other bills in the process.

"The self-insured companies knew that if this bill passed they could not bring their 'wish list bill' back," said Roy Smith, Secretary-Treasurer of the WV State Building Trades.

"We know the system needs to be fixed, but it should not be on the backs of workers."

It appears that a special session of the legislature will be called at some point to see if a compromise can be found.

"I've said it many times," said Bowen. "We need an enforcer, someone who will make the existing laws work, collect payments and stop all kinds of fraud. We can do that with current law, why aren't we?"

# Companies Profit From \$1.5 Billion Comp Debt

**ACT research has uncovered \$1.5 billion in unpaid workers compensation premiums. And the number still grows.**

Talk about changes to the state's workers compensation system usually focus on benefit cuts or premium increases.

But is anyone looking at the unpaid premiums?

The Workers Compensation division keeps lists of "active and inactive default employers." These fund defaults add up to more than \$880 million.

Most of those debts come

from coal companies.

Another huge area of debt is claims that have been "dumped" into the "Second Injury" fund. This fund was proposed to help World War II veterans but instead it is a favorite place for large self-insured companies to "dump" claims they should be paying.

The price tag is estimated at \$600 million.

Several companies created the \$1.5 billion debt thus profiting from their non-payments.

For example, Island Fork Construction Ltd., is a non-union mining company. In 1999 they applied for and received

self-insured status, even though they had a bad safety record according to MSHA documents.

Self-insured status meant they didn't have to pay premiums, often 30 percent or more of payroll. But after two miners died in 2002, Island Fork filed bankruptcy and is now back into the fund. And they bring back the cost of those claims that are not covered by bonds.

A February 10, 2003 list from workers compensation lists the company owing more than \$2 million.

Even though the owners of

Island Fork had a \$2 million debt they were allowed to start another company, Duty Branch Coal.

And these same owners are listed on corporation records as officers of a long list of companies such as Mahon Enterprises, Vendor City, and Picture This Inc., some of which are also in default.

Island Fork has a pending mining application at the Division of Environmental protection.

"We need to stop the Island Forks of the world from doing business in this state," said ACT's Steve White.

"And we need to go after the big companies that Island Fork is mining for."

Another example is the owners of Skyco Trucking Company, which is number one on the workers comp active default list with a debt of about \$2 million. They have a long string of failed companies that

*Continued on p. 4*

## Lang Brothers Inc. Must Repay \$25,000 In Wages

**Lang Brothers Inc. of Bridgeport has been caught skirting the law again.**

The Division of Highways (DOH), with help from Rodney Marsh, Organizer for Operating Engineers Local 132, found that the company cheated its workers out of more than \$25,000 in hourly wages at the Coalfield Expressway project.

"Certified payrolls indicated Lang Brothers had underpaid virtually every employee on the Sophia, W.Va. highway project," said Marsh.

According to a letter from John S. Walker, Acting Director of the DOH to Robert Lang, owner of Lang Brothers Inc., the shortage in wages appears to be due to the use of the wrong wage rate.

"It's funny how these cheating companies often use the wrong wage rate to pay employees, but the rate never seems to be incorrect in the workers' favor," said Marsh.

In addition to calling the underpayment to the attention

of the DOH, Marsh also sent a letter to each worker informing them of the company's error.

"With the help of ACT's database, we will continue to monitor every construction project in the state to ensure the companies pay workers at the legal rate," said Marsh.

"It is important to make sure these companies follow the prevailing wage laws. They level the playing field for honest construction companies that bid on public projects."

Lang Brothers not only underpays its workers, the company also puts them in danger.

Last year Lang Brothers was forced to pay a \$12,000 fine for endangering workers at the same highway project by OSHA.

Marsh took photos of workers in a 10-foot deep, unsecured ditch at the Lang Brothers construction site.

At press time, none of the workers had received the checks the DOH ordered Lang Brothers to issue.



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**NEW MEMBERS** Wilma Pile (left) and Nancy Canterbury talk with Branch Manager Judy Parsons at the new union trades office at the WV State Building Trades, 600 Leon Sullivan Way, Charleston next to the Farmers Market.

# Union Trades Members Support Power Project

**A**lmost 200 building trades union members attended the recent Monongalia County Commission hearing.

They showed support for the proposed \$900 million Longview Power Plant project.

The hearing was the second on the power plant project proposed by Massachusetts based GenPower.

The hearing focused on the economic impact of the project.

Union members voiced their opinions on all the positive aspects of the project, from the number of good union jobs it would create to the huge economic impact those jobs would have on the local community.

ACT Director Steve White presented a study conducted by the Center for Labor and Community Research, which outlined the economic impact of the project.

Most important was the creation of almost 1,200 construction jobs at peak employment.

The study showed approxi-



*SPEAKING IN SUPPORT of the \$900 million, coal-fired power plant is Chuck Flohr, a fourth year apprentice with Boilermakers Local 667.*

mately how much money would be generated by the multiplier effect in Monongalia County using a formula from the U.S. Department of Forestry. The figures make a strong case.

- \$159 million will be paid in wages and benefits, including \$114 for construction workers

- \$443 million in new business sales over three years

- \$55 million in revenue for small business

- \$64 million in new state and federal tax revenue

The study also shows the additional impact of a coal mine assuming 100 employees for a period of one year and a power plant with 50 workers.

Although the vast majority of the crowd supported the project there were a number who spoke against it. Issues from environmental concerns to 'view shed' were raised.

But Operating Engineers Local 132 Business Agent Tom Halfin summed up the crowd's feelings well.

Organized labor also had some shortfall this session.

A bill allowing public-private partnership to create more highway construction didn't pass.

"This bill created a win-win situation for the state, companies that wanted better access to their businesses and most of all construction workers," said Ronnie Burdette, Business Manger for IUOE 132.

The latest news from the Capitol is a special session will be called in the next few months to deal with the workers comp.

"This project will create 1,200 much needed construction jobs over a four-year period," said Halfin. "We support a project that puts local union workers on the job."

The County Commission and School Board must decide whether or not to allow a property tax deal for the plant.

ACT's report shows that the

community can take less in property taxes and still come away with huge revenues in wages and taxes.

"The bottom line is there is no reason to stop this project," said Darwin Snyder, President of the North Central WV Building Trades. "Local workers, business owners and taxpayers need this project."

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## Session

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taken the prevailing wage requirement off of public projects worth under \$100,000 as well as banning data from collective bargaining agreements.

The bill died in the Labor Committee where it originated.

"The 30 percent determination rule was a problem because it was unclear which 30 percent had to report its payroll," said Brewer. "If huge projects like the \$80 million Clay Center were left out, the prevailing wage rate would be shot."

In the House, three attacks on prevailing wage were launched.

The first was a bill eliminating prevailing wage on school projects. Another was HB3116, which limited the enforcement power of the DOL. The last was an amendment proposed by Republican Leader Charlie Trump, (R-Morgan) that would have banned prevailing wage on certain courthouse projects.

Thanks to friends, both Democratic and Republican, it never happened.

## Comp Debt

*CONTINUED FROM P. 3*

owe millions to the fund.

Those companies include Meador Energy, which has accrued a workers compensation debt of \$2 million, Pine Mountain Resources with \$1.75 million and Big Hickory Mining, owing \$3.1 million.

"Why was Skyco allowed to operate when the same people had three companies with huge debts?" asked White.

"The state needs to clean house under the current system before lawmakers cut benefits for workers and raise premiums on honest businesses."

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